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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

JUL 06 2004  
Date:

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of multiple misdemeanors.

On appeal, the applicant admits to having numerous misdemeanor convictions, but claims he has never injured anyone.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The applicant was convicted of Driving Under the Influence With One Prior and Driving With a Suspended or Revoked License With Two Priors on February 24, 1988. He was sentenced to 180 days imprisonment and 30 days imprisonment, respectively. He was convicted of Driving Under the Influence Less Than .10% on August 19, 1985 and sentenced to 13 days imprisonment. Due to a probation violation, that sentence was adjusted to 40 days on November 27, 1985. Clearly, these are all misdemeanors punishable by more than five days imprisonment. Additionally, the fact that the applicant was convicted twice before of Driving With a Suspended or Revoked License means the applicant was convicted of at least five misdemeanors.

On appeal, the applicant specifically states he was convicted of numerous offenses relating to driving under the influence. He indicates he never committed a crime or injured anyone. This may mean that he believes these vehicular misdemeanors should not be construed as actual misdemeanors. However, as stated above, any alien who has been convicted of three or more misdemeanors in the United States, which were punishable by more than five days imprisonment, is ineligible for temporary residence, without regard to the type of misdemeanor offense.

The applicant is ineligible for temporary resident status because of his five misdemeanor convictions. 8 C.F.R. § 245a.2(c)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.